



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 16, 2006

Ms. Mary J. Ibarra
Assistant District Attorney
Bexar County District Attorney's Office
300 Dolorosa, 5th Floor
San Antonio, Texas 78205

OR2006-12094

Dear Ms. Ibarra:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 262163.

The Bexar County Office of Planning and Resources Management and the Bexar County District Attorney's Office (collectively the "county") received requests for information pertaining to the office of the Justice of the Peace, Precinct 1, Place 2. You state that the county has released some of the requested information, but claim that the remainder of the requested information is not subject to the Act. In the alternative, you claim that this information is excepted from disclosure under sections 552.103, 552.107, and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.¹

You assert that the submitted information is a judicial record and, therefore, is not subject to release under the Act. Public disclosure of judicial records is governed by rule 12 of the Rules of Judicial Administration, not the Act. *See* Gov't Code § 552.0035(a). Rule 12.2 of the Rules of Judicial Administration defines a "judicial record" as "a record made or maintained by or for a court or judicial agency in its regular course of business but not

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

pertaining to its adjudicative function[.]” Tex. R. Jud. Admin. 12.2(d). In this instance, the submitted information consists of a list of the amount of revenue created by the various justices of the peace and constables of Bexar County during a certain time period. After our review, we find that the submitted information is not a judicial record subject to the Rules of Judicial Administration. Rather, we find that the submitted information was created and maintained by the county for its own administrative and financial purposes. Therefore, the submitted information is subject to the Act and may only be withheld if it is excepted from disclosure under the Act.

You claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.108 of the Government Code. However, although you raise these exceptions, you have not submitted arguments explaining how sections 552.107 and 552.108 apply to the submitted information. *See* Gov’t Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Therefore, we conclude that you have waived your claims under sections 552.107 and 552.108. *See id.* §§ 552.301, .302. We will address your arguments under section 552.103.

Section 552.103 of the Government Code provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Id. § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that: (1) litigation is pending or reasonably anticipated on the date the request for information is received; and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 551 at 4 (1990). A government body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably

anticipated must be determined on a case-by-case basis. *See id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that, if an individual publicly threatens to bring suit against a governmental body but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

You provide documentation showing that on August 1, 2006, the Bexar County Commissioners' Court voted to abolish the office of the Justice of the Peace, Precinct 1, Place 2. You state that the submitted information relates to the decision to abolish that post. You also state that prior to the receipt of the requests for information, the current justice of the peace for precinct 1, place 2 publicly threatened legal action over the abolishment of his post. We note, however, that you have not demonstrated that the justice of the peace took objective steps toward litigation over this matter. Therefore, we find that you have not established that litigation was reasonably anticipated when the requests for information were received. Accordingly, the submitted information may not be withheld under section 552.103 of the Government Code. As you raise no other exceptions to disclosure, the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/dh

Ref: ID# 262163

Enc. Submitted documents

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